

**JURY TRIAL, REQUIREMENTS FOR — Rule 18 — Right to jury trial is "inherently personal" and defense counsel cannot waive it for the defendant; court personally must address defendant and confirm his waiver —
Revised 3/2010**

Rule 18.1(b), Ariz. R. Crim. P., provides the procedure for a defendant to waive the right to a jury trial. "Before accepting a waiver the court shall address the defendant personally, advise the defendant of the right to a jury trial and ascertain that the waiver is knowing, voluntary, and intelligent." Rule 18.1(b)(1), Ariz. R. Crim. P. Moreover, a waiver may be made only in writing in or in open court on the record. Rule 18.1(b)(2), Ariz. R. Crim. P.

Article 2, Section 23 of the Arizona Constitution requires that "[j]uries in criminal cases in which a sentence of ... imprisonment for thirty years or more is authorized by law shall consist of twelve persons." "The right to a twelve-member jury may be knowingly, intelligently and voluntarily waived under the same procedure required under Ariz. R. Crim. P. 18.1(b) for waiver of a jury trial." *State v. Prince*, 142 Ariz. 256, 258, 689 P.2d 515, 517 (1984); *accord State v. Reid*, 155 Ariz. 399, 402, 747 P.2d 560, 563 (1987). Because the court must address the defendant personally before accepting a waiver of the right to jury trial or the right to a twelve-person jury, defense counsel may not waive those rights on the defendant's behalf if the defendant is not present. *State v. Cochran*, 109 Ariz. 327, 328, 509 P.2d 220, 221 (1973); *State v. Wren*, 115 Ariz. 257, 258, 564 P.2d 946, 947 (App. 1977). However, a sentence does not violate the Arizona Constitution if a defendant is charged with offenses that could result in a sentence of thirty years or more, the case proceeds to verdict with a jury of less than twelve people without objection, and the resulting sentence is less than thirty years. *State v. Soliz*, 223 Ariz. 116, 219 P.3d 1045 (2009). By failing to request a jury

of 12 when a sentence of 30 years or more was authorized by law for the crimes charged, the State in such a situation effectively waives its ability to obtain a sentence of 30 years or more. *Id.* at ¶ 16, 219 P.3d at 1048. If by the time the case is submitted to the jury, a sentence of 30 years or more is no longer authorized by law, the Arizona Constitution does not mandate 12 jurors. *Id.* at ¶ 13, 219 P.3d at 1048.